## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS LUFKIN DIVISION

NORMAN CRITTENDON	§	
VS.	§	CIVIL ACTION NO. 9:18-CV-12
DIRECTOR, TDCJ-CID	<b>§</b>	

## ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Norman Crittendon, an inmate confined at the Polunsky Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed what appeared to be a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Mr. Crittendon also filed an application to proceed *in forma pauperis*.

The Court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. Construing the complaint as claims involving the conditions of confinement, the Magistrate Judge recommends plaintiff's application to proceed *in forma pauperis* be denied pursuant to 28 U.S.C. § 1915(g) as no allegations of imminent danger have been made.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Plaintiff filed objections the Report and Recommendation of United States Magistrate Judge. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

Plaintiff argues he filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Although petitioner used a § 2254 form, the claims and relief he seeks are proper under a civil rights claim filed pursuant 42 U.S.C. § 1983. Plaintiff alleges he was denied equal protection under the law as his classification prohibits him from being considered for parole. Absent extraordinary circumstances, a prisoner does not have a constitutionally protected liberty interest in his

classification or in remaining free from administrative segregation. *See Sandin v. Conner*, 515 U.S. 472, 485 (1995); *see also Martinez v. Johnson*, 103 F. App'x 531 (5th Cir. 2004) (similar claim dismissed under § 1983 for failure to state a claim and as frivolous). To the extent plaintiff also complains he was denied parole based on his classification, Texas prisoners have no protected liberty interest in parole. *Allison v. Kyle*, 66 F.3d 71 (5th Cir. 1995). It would appear plaintiff is attempting to circumvent the § 1915(g) bar.

## **ORDER**

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

So Ordered and Signed

Nov 14, 2018

Ron Clark, Senior District Judge

Rm Clark